IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 6797 of 2005

Between:

A.Nageswari, W/o. B.Simhagiri Swamy,
O/o. District Manager, A.P.State Housing Corp. Ltd.
Srikakulam District.

..... PETITIONER

AND

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1 A.P.State Housing Corporation Ltd., rep. by its

Mangaing Director, Urdugally, Himayatnagar,

Hyderabad.
2 The Govt. of A.P., rep. by its Secretary, Housing Dept.,
A.P. Secretary, Hyderabad.
3 The Director General, Anti Corruption Bureau (ACB),
Abids, Nampally, Hyderabad.
4 A.P. State Housing Corp. Ltd., rep. by its District

Manager, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the first respondent in issuing the impugned order bearing Pro.No.Vig.1/5541/VZM/2003-1, dt.05.03.2005 as arbitrary and illegal and set aside the same.

Counsel for the Petitioner: MR.S.SATYAM REDDY

Counsel for Respondents 1 & 4: Mr. K. Mohanram Reddy

Counsel for Respondent No.2: GP FOR HOUSING

Counsel for Respondent No.3: Mr. V. Ravi Kiran Rao

The Court at the admission stage made the following :

ORDER:

Questioning the action of the first respondent in issuing the impugned order bearing Pro.No.Vig.1/5541/VZM/2003-1, dated 5.3.2005 the petitioner filed the present writ petition.

According to the petitioner she was not aware of any case registered by ACB. No

material was placed connecting the petitioner for the incident. More over, the ACB also never found anything against her in its investigation and she was never summoned or examined during the course of investigation. Solely basing on the letter addressed by the Government, the first respondent proceeded mechanically and placed the petitioner under suspension. Therefore, the order passed by the first respondent is arbitrary and illegal. Hence the present writ petition.

Learned counsel for the petitioner contended that as per the directions issued by the Government in proceedings dated 22.2.2005, the first respondent by impugned order dated 5-3-2005 placed the petitioner under suspension, which amounts to totally non-application of mind. He further contended that the alleged incident took place about two years back and suspending the petitioner at this belated stage is nothing but purely misuse of power. In support of his contention learned counsel placed reliance upon a Division Bench judgment of this court in **D. Ramesh Sinha V. Cadre Authority for Key Personnel of Cooperative Central Banks/apex Bank, Hyderabad**.

On the other hand, the learned Standing Counsel appearing for the third respondent contended that after detailed enquiry, the ACB authorities recommended for taking departmental action against the petitioner and some others for certain irregularities committed by them in the construction of houses at Konda Kenguva Village, Ramabhadrapuram Mandal, Vizianagaram District. The investigation discloses that the present petitioner and others have alleged to have collected 8% bribe amount form 18 beneficiaries and therefore the petitioner was placed under suspension.

On the other hand the learned counsel appearing for respondents 1 and 4 contended that after consideration of material available on record including the report placed by the DSP, Vizainagaram, and after getting instructions from the Government, the first respondent placed the petitioner under suspension. Therefore the suspension order does not suffer from any incurable legal infirmity, warranting interference of this court. Hence the writ petition may be dismissed.

Normally, this court will not interfere with the suspension order pending the enquiry, unless the authority, who passed the suspension order, has no jurisdiction at all and also when there is total non-application of mind by the concerned authority. No doubt, the Secretary to the Government through proceedings dated 22.2.2005

requested the first respondent to place the petitioner along with others under suspension pending the enquiry. Basing on the letter if the first respondent acted upon it without there being any material, then certainly it would be non-application of mind.

In *D. Ramesh Sinha's case, supra,* this court held as under:

> While exercising such statutory power, the competent authority, must therefore, apply its mind independently as to whether the conditions precedent for exercising such power exist. It is now trite that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be a non est in the eye of law. It is also well settled that while passing an order, if the statutory authority ignores the relevant factors or takes into considerations, factors not germane for the passing of the order, then such action or the order flowing from such action, would be vitiated in law. Equally well settled is the principle that the statutory authority while exercising statutory powers, must pose correct questions so as to apply correct legal principles and arrive at correct conclusions basing on the actual and exact state of affairs, and if he fails to do so, the same would amount to misdirection in law.

From the above decision it is clear that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be a non est in the eye of law.

As seen from the impugned proceedings, it is clear that not only basing on the report furnished by the Government, but also the authority after careful consideration of the available material, and having due regard to the circumstances of the case, satisfied that the criminal charge under investigation is connected with her official position as a Government servant and involved moral turpitude. Therefore, if the impugned order is passed solely basing on the proceedings passed by the Secretary to the Government dated 22.2.2005, there will not be any difficulty to accept the contention of the learned counsel for the petitioner. But as seen from the impugned proceedings it is evident that along with the letter some more material has been placed before the first respondent. Therefore, the decision relied upon by the learned counsel for the petitioner has no application to the facts of the present case in view of the fact that all the available materials were placed before the first respondent. Hence, it is not a case that the first respondent has no jurisdiction to issue or suspend the employee. Therefore, the order under challenge does not

suffer from any legal infirmity, warranting interference of this court. Whether the petitioner is actually working on that place when certain irregularities were committed, and whether the involvement of the petitioner in the alleged irregularities, are required to be decided at the time of enquiry, but certainly not in this writ petition.

Therefore, the writ petition is de void of merits and is accordingly dismissed. No costs.

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K.C. Bhanu, J.

7th April 2005

js.

To

1 A.P. State Housing Corporation Ltd., rep. by its

Mangaing Director, Urdugally, Himayatnagar,

Hyderabad.

2 The Secretary, Govt. of A.P., Housing Dept.,
A.P. Secretary, Hyderabad.

3 The Director General, Anti Corruption Bureau (ACB),
Abids, Nampally, Hyderabad.

4 The District Manager, A.P. State Housing Corp.

Ltd., Srikakulam District.

5 Two CCs to G.P. for Housing, High Court Buildings, Hyderabad.

6 2 CD copies.